In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 253

UNITED STATES OF AMERICA, APPELLANT

v.

THE PULLMAN COMPANY, PULLMAN-STANDARD CAR MANUFACTURING COMPANY, PULLMAN INCORPORATED, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETITION FOR REHEARING

It is respectfully prayed that this Court reconsider its order dated March 31, 1947, which by an equally divided court affirmed without opinion the judgment of the District Court approving the sale of the Pullman Company, which operates and services virtually all sleeping cars moving in interstate commerce in the United States, to a combination of railroads operating on their lines practically all of the sleeping car service in the United States.

The United States submits that the issues in this case are of such public importance as to call

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for final adjudication by this Court; that the decree of the District Court constitutes a precedent which is bound to create disharmony in the administration of the antitrust laws; and that this Court should, therefore, undertake to reconsider its order with a view towards achieving a definitive disposition of the important issues presented by this cause.

The central importance of the case lies in the standards by which the District Court regarded itself as bound in determining the scope of remedial relief in an antitrust proceeding. The District Court approved the sale of the sleeping car business to the railroad buying group without considering the question whether the sale to that purchaser would promote competition and dissipate the effects of the unlawful monopoly which had previously existed. The court made no attempt to determine whether sale to the other bidders would more effectively carry out the purposes of the antitrust laws.

In the Government's view it is the duty of a court, once a violation of the antitrust laws has been found, to fashion remedies appropriate to dissipate and destroy the unlawful restraint of trade. The court cannot delegate to a wrongdoer, in a case such as this, the task of devising a remedy to wipe out its own wrongdoing. It is the function of the court itself to administer relief

and to enter appropriate orders not only to eliminate the unlawful monopoly but also to prevent its recurrence in the same or a different form. Any other conclusion will have serious consequences in the enforcement of the antitrust laws. If the court below is correct in regarding itself as under no obligation to avoid a decree which would give rise to a new monopolization and restraint of commerce as violative of the antitrust laws as that struck down by its original judgment, it is believed that a serious inroad has been made on the capacity of the federal courts to effectuate the antitrust policies embodied in the Sherman and Clayton Acts.

The United States respectfully submits that the decision below not only is erroneous but calls for correction by this Court. The issues arise in one of the most important cases brought under the antitrust laws; and the affirmance of the decree below, without having the approval of a majority of the members of this Court, leaves the law cloudy in an area where great need exists for the clarification which only this Court can give. There are a large number of antitrust cases now pending in which the district courts will be required to determine the standards to be followed and applied in granting relief against unlawful monopolies. If this case remains in its present posture, the federal courts will be left in doubt as

to their duty in an antitrust suit when it has been found that an illegal restraint of commerce exists and should be destroyed.

GEORGE T. WASHINGTON,
Acting Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

APRIL 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947